IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11124 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOMABHAI J PATEL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11124 of 1994

MR US BRAHMBHATT for Petitioner No. 1

SERVED BY RPAD - (R) for Respondent No. 1

MR ALPESH RAJPURIYA for Respondent No. 1,4

MR PM THAKKAR for Respondent No. 2

MR YF MEHTA for Respondent No. 2,3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 24/12/2004

ORAL JUDGEMENT

#. The petitioner was initially appointed as Assistant

Lecturer in L.E. College with effect from 17th July, 1962 and served there up to 30th September, 1963. Thereafter, the petitioner rendered services as Extra Assistant Director of Central Water & Power Commission, Government of India from 4.10.1963 to 16.8.1965 and subsequently joined Kandla Port Trust, the respondent no. 4 herein, as Assistant Mechanical Superintendent (Vacuators) from 18.8.1965 to 31.3.1973. According to the petitioner, he was transferred from Kandla Port Trust to the Food Corporation of India, the respondent no. 2 herein with effect from 1.4.1973 and, therefore, in view of the continuity of service, according to the petitioner, arising out of his service career with different respondent-authorities and on the basis of the award dated 5.8.1991 passed by the learned Industrial Tribunal, and on the basis of various government circulars and provisions of Section 12 of the Food Corporation of India Act, 1964, the petitioner has claimed various pensionary benefits and the benefits arising out of the Provident Fund and such other dues.

#. As per the prayer Clause (B) of para-10 of the petition, a direction is sought against the respondents for issuing a writ of mandamus or any other appropriate writ, order or direction to grant prorata pension for the services rendered at pensionable establishments from 17.7.1962 to 31.3.1973, payable to the petitioner from 1.4.1973. Along with that, second prayer made by the petitioner is to grant consequential benefits accruing to the petitioner on the basis of an option exercised by the petitioner, pursuant to the offer given by the Food Corporation of India and the award passed by the learned Tribunal dated 5.8.1991.

#. The respondents-authorities have filed affidavits-in-reply respectively. One affidavit-in-reply is filed by Shri N.M. Narayan, Deputy Manager, on behalf of the respondents nos. 2 and 3 i.e. Food Corporation of India and another by Shri Suresh Kumar Manackel, Assistant Secretary on behalf of the respondent no. 4-Kandla Port Trust. The main tenor of the affidavit-in-reply filed by both the deponents is that so far as the provision of Section-12A of the Food Corporation of India Act is concerned, the same is not applicable. The deponent has reproduced the earlier order passed in Special Civil Application No. 942 of 1979, which reads as under:-

"For the reasons stated in Company judgment, Court rejects the petition and discharges Rule with no order as to costs. The Court also

observes that since the petitioner has not opted for the FCI (Food Corporation of India) by his conduct and Food Corporation of India also treating him as his employee from 1.1.73 he will be entitled to the benefits that follow from his continuous appointment with Corporation ever since 1.1.1973."

#. So far as the affidavit-in-reply filed by the Kandla Port Trust is concerned, it is stated therein that the Kandla Port Trust is liable to pay pensionary benefits to the petitioner for the period from 18.8.1965 to 24.11.1969 during which period the petitioner had rendered his services.

#. Along with the affidavit-in-reply filed by the Kandla Port Trust-the respondent no. 4 herein, copy of the judgment delivered by the Consumer Disputes Redressal Forum, Ahmedabad (Rural), Ahmedabad dated 30th July, 2004 in Complaint No. 896 of 1997 is produced, wherein, it is stated that the petitioner herein, has, during the pendency of this petition, preferred a complaint to redress the grievances with identical subject matter and issues involved in the present petition and the Consumer Disputes Redressal Forum, after hearing all the parties, namely; representatives of the Food Corporation of India and the Kandla Port Trust, allowed the complaint of the petitioner herein and ordered that the respondents nos. 1 and 2 are jointly and severally liable to pay the outstanding dues of the petitioner towards the pension, provident fund and such other dues within two months, after settling his claim from the date of receipt of the order of the Forum. It is further ordered that the respondent nos. 1 and 2 are jointly and severally liable to pay the amount of Rs.5000/- as pension or the amount which is accruing to the petitioner on the date of pension i.e. with effect from 30th April, 1997 and to pay all the outstanding dues towards pension of the petitioner with effect from 30th April, 1997 till the actual payment is made with yearly interest of 9%. The Forum and further awarded Rs. 10,000/- towards mental agony and Rs. 5,000/- towards costs.

#. Mr. Y.F. Mehta, the learned advocate for the respondent has specifically invited attention of this Court to para-6 of the order of the learned Consumer Disputes Redressal Forum, dated 30th July, 2004, wherein the grievance is made by the respondent no. 3 that for identical issues and the subject matter raised before the Consumer Disputes Redressal Forum, the applicant has filed Special Civil Application No. 11124 of 2004 before

this Court and, therefore, no claim is to be adjudicated. Mr. Mehta has further invited attention of this Court to the observation of the learned Consumer Disputes Redressal Forum with regard to the defence raised by the respondent no. 4 about the maintainability of the complaint before the Consumer Forum, when the matter was sub-judice before this Court.

#. However, the learned Consumer Disputes Redressal Forum has not accepted any of the defences advanced by the respondents relying on the definitions of "consumer" and "services", as contained in Consumer Protection Act, 1986, and various judgments of the Apex Court and after perusing the record of the case, the complainant of the said complaint, the petitioner herein, was given the benefits towards pension, provident fund and such other dues and the respondent authorities have been directed to comply with the same within two months from the receipt of the order of the Tribunal.

#. However, the learned advocate Mr.U.S.Brahmbhatt, appearing for the petitioner has stated that the grievances of the petitioner are not yet fully redressed and the Forum has not fully allowed his claim in his favour.

#. Having heard the learned advocate for the petitioner and having perused the record of the petition and particularly, the award dated 30th July, 2004, passed by the Forum in Complaint No. 896 of 1997 filed by the petitioner herein, agitating the same grievances and the issues raised in the present petition, which are raised before the Forum and as per its order, it is clear that the grievances of the petitioner herein are redressed and taken care of. Not only that, but the petitioner herein is also awarded special amount of Rs. 10,000/- towards mental agony and Rs. 5,000/- towards costs. It is pertinent to note that outstanding dues towards the pensionary amount are to be paid to the petitioner with effect from 30th April, 1997 with yearly interest of 9%. It is also ordered that the other dues of the petitioner also be fully paid.

##. In view of the facts and circumstances stated hereinabove, the subject matter of this petition does not survive any more in view of the award dated 30th July, 2004 passed by the Consumer Disputes Redressal Forum in Complaint No. 896 of 1997. Even otherwise, for outstanding retiral dues of an employee, appropriate forum is not High Court to exercise extraordinary power under Article 226 of the Constitution, particularly when

the petitioner has resorted to efficacious alternative remedy and even his grievances are redressed, no further interference is required by this Court. The petition stands dismissed. Rule is discharged with no order as to costs.

[ANANT S. DAVE, J.]
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